

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

TAMMY HENRY MONK,)	
)	
Plaintiff,)	Civil Action No. 5:01cv00093
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
STUART M. PERRY, INC.,)	By: Samuel G. Wilson
)	Chief United States District Judge
Defendant.)	
)	

Plaintiff Tammy Henry Monk (“Monk”), an employee for Defendant Stuart M. Perry, Inc. (“Perry”) proceeding pro se, brings this action for employment discrimination under the Equal Pay Act of 1967, 29 U.S.C. § 206(d), and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (“Title VII”). Monk claims that Perry, through its employees, sexually harassed her, took adverse employment actions against her based on her sex, and paid her less compensation because of her sex.¹ Perry filed a motion to dismiss on April 8, 2002 claiming Monk failed to exhaust her administrative remedies. Specifically, Perry claimed that Monk did not raised any claims of sexual harassment or sex discrimination, other than discrimination in compensation, in her EEOC charge and should be barred from bringing those claims in federal court. The court denied Perry’s motion without prejudice and granted the parties sixty days of additional discovery to determine whether Monk had a reasonable basis for believing that her EEOC charge included the claims of sexual harassment and sex discrimination other than in

¹Because Monk is a *pro se* plaintiff, this court construes her motions and pleadings liberally, holding her to less stringent standards than attorneys drafting documents. See Beaudett v. City of Hampton, 775 F.2d 1274, 1277-78 (4th Cir. 1985).

compensation. On August 16, 2002, Perry filed this renewed motion to dismiss. Because the court granted additional time for discovery on this issue and both parties have presented material outside the pleadings for the court's consideration, the court treats the motion as one for partial summary judgment.² For the reasons stated, the court grants Perry's motion.

I.

Monk has worked for Perry as a dump truck driver since September 9, 1996. On October 27, 2000, Monk filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") accusing Perry of sexually discriminating against her by paying her less wages than similarly situated male employees. In the charge of discrimination, Monk marked the boxes next to "Sex" and "Other," specifying "Equal Pay." She claimed violations of "the Equal Pay Act of 1963, as amended, and . . . Title VII of the Civil Rights Act of 1964, as amended." Specifically, Monk alleged: "In early January 2000 my employer gave higher pay raises to less senior male drivers for the same job that I perform. I complained to my supervisor, Cecil Hahn (male) and, through him, to the owner, Denny Perry (male). Mr. Hahn told me Mr. Perry said that . . . I 'got what [I] was supposed to get.'" The EEOC investigated Monk's charge, and issued a notice of dismissal and right to sue letter on August 20, 2001. The EEOC provided no indication in the right to sue letter or in the notice of dismissal that it investigated any charges of sexual harassment or sex discrimination other than those related to her allegedly discriminatory compensation.

² See Laughlin v. Metropolitan Washington Airports Auth., 149 F.3d 253, 261 (4th Cir. 1998) (holding that, where affidavits and other matters outside the pleadings are submitted to the court, the parties are on notice that the motion to dismiss could be considered by the court to be a summary judgment motion).

According to the affidavit of Pedro Pla-Davila, the EEOC intake officer who handled Monk's claim, Pla-Davila told Monk that her sexual harassment claim would be difficult to establish, but that it could still be included in her charge. Monk then decided not to include the sexual harassment claim in the EEOC charge. (Pla-Davila Aff. ¶ 4.) Pla-Davila never told Monk the EEOC charge contained any allegations of sexual harassment. (Pla-Davila Aff. ¶ 6.) Monk acknowledges in her response brief that:

the investigator told Mrs. Monk that [she] couldn't file for sexual harassment because the last issue that the EEOC considered to be sexual harassment, which was when a co-worker grabbed her breast, was beyond the time limits for a [sic] filing a sexual harassment claim. The investigator told Mrs. Monk that he would only take the charge of wage discrimination.

(Monk Resp. Br. at 5.) There is no mention in Pla-Davila's affidavit of any claims based on sex discrimination other than those relating to compensation. Monk's EEOC charge and her accompanying affidavit do not contain any allegations of discrimination other than those relating to compensation.

II.

A claimant under Title VII must exhaust her administrative remedies with the EEOC before bringing a private action in federal court. Sloop v. Memorial Mission Hosp., Inc., 198 F.3d 147, 148 (4th Cir. 1999). Exhaustion requires that the plaintiff file a charge of discrimination with the EEOC and receive a right to sue letter before filing a complaint. 42 U.S.C. § 2000e-5(b). Only those discrimination claims stated in the initial charge and those reasonably related to the initial charge can be maintained in a private civil action. Evans v. Technologies Applications & Services Co., 80 F.3d 954, 962-63 (4th Cir. 1996). In its previous

opinion, the court found that the sexual harassment claim and other sex discrimination claims were not included in the initial charge and that “Monk’s allegations . . . are not reasonably related to her EEOC charge.” The court noted, however, that the doctrine of equitable estoppel might allow Monk to avoid dismissal for failure to exhaust her administrative remedies if Monk could prove that she “reasonably relied” on misleading conduct by the EEOC. See Hentosh v. Herman M. Finch University of Health Sciences/The Chicago Medical School, 167 F.3d 1170, 1173 (7th Cir. 1999). The court concluded that unless the EEOC interviewer affirmatively led Monk to believe that her charge would include the sexual harassment and other sex discrimination claims, it was unlikely that Monk had a reasonable basis to believe that she had actually raised those claims in her EEOC charge. The court granted sixty days of additional discovery to allow the parties to address whether Monk had a reasonable basis to believe she had raised the claims in her EEOC charge. After the discovery period ended, Perry renewed its motion to dismiss.

Monk has not come forward with any additional evidence suggesting the EEOC affirmatively led her to believe her charge included claims for sexual harassment and sex discrimination other than wage discrimination. To the contrary, Monk admits in her response brief that Pla-Davila, her EEOC interviewer, told Monk the sexual harassment claim was time-barred and was not included in her charge. This is confirmed by Pla-Davila’s affidavit. According to Pla-Davila, Monk was aware that the sexual harassment claim was not included because she made the decision not to include the claim herself.

The court finds that Monk has not produced sufficient evidence to show that the EEOC affirmatively led her to believe her EEOC charge included claims other than discrimination in compensation. Relying on the evidence submitted by the parties, the court finds that Monk did

not have a reasonable basis to believe her sexual harassment and other sex discrimination claims were included in her charge. Thus, Monk cannot rely on the doctrine of equitable estoppel to excuse her failure to exhaust her administrative remedies. Accordingly, Monk's claims of sexual harassment and sex discrimination in the terms and conditions of her employment, other than discrimination in compensation, are barred by Monk's failure to timely file those charges of discrimination with the EEOC.

III.

For the reasons stated, the court grants defendant's partial motion for summary judgment. An appropriate order will be entered this day.

ENTER: This November 4, 2002.

CHIEF UNITED STATES DISTRICT JUDGE

TAMMY HENRY MONK,

Plaintiff,

v.

STUART M. PERRY, INC.,

Defendant.

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Civil Action No. 5:01cv00093

ORDER

By: Samuel G. Wilson
Chief United States District Judge

ENTER: This November 4, 2002.

CHIEF UNITED STATES DISTRICT JUDGE